IN THE SUPREME COURT

STATE OF NORTH DAKOTA

Supreme Court No. 20180176

District Court No. 30-2018-MH-00009

In The Interest of	)
	)
B.A.K.,	)
	)
	)
Respondent/Appellant.	)

BRIEF OF THE PETITIONER/APPELLEE

APPEAL FROM THE FINDING OF FACT, CONCLUSIONS OF LAW AND ORDER FOR TREATMENT AFTER TREATMENT HEARING HELD ON APRIL 5, 2018, AND FILED APRIL 6, 2018, THE HONORABLE MORTON COUNTY DISTRICT JUDGE THOMAS J. SCHNEIDER, PRESIDING.

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North Dakota Rules of Civil Procedure:

Statement of the Issues

[¶1] Whether there was clear and convincing evidence to show that the Respondent was "mentally ill" and a "person requiring treatment" pursuant to the definition provided at Section 25-03.1-02(12) and (13), respectively, of the North Dakota Century Code?

[¶2] Whether the lower court correctly applied the statutory criteria that the Respondent faced a serious risk of harm due to a substantial likelihood of, as stated at Section 25-03.1-02(20)(d) N.D.C.C. "substantial deterioration in mental health which would predictably result in dangerousness to the Respondent, others or property, based upon acts, threats, or patterns in the Respondent's treatment history, current condition, or other relevant factors, including the effect on the Respondent's mental condition or the Respondent's ability to consent"?

Statement of the Facts

[¶3] The Appellee is satisfied with the statement of the case and the statement of facts as provided by the Appellant.

Standard of Review

The Clearly Erroneous Rule

[¶4] The Appellee agrees with the Appellant that the standard of review in the case on appeal is limited and the standard is governed by Rule 52(A) of the North Dakota Rules of Civil Procedure, to the extent that findings of fact, whether based on oral or other evidence, must not be set aside unless clearly erroneous, and the reviewing court must give due regard to the trial court's opportunity to judge the witnesses' credibility. Id.

Argument

I. The findings of fact, conclusions of law, and order for treatment, as provided by the lower court at the conclusion of the treatment hearing, was supported by clear and convincing evidence that the Respondent was a "mentally ill person" and a "person requiring treatment" pursuant to the statutory definitions provided at Section 25-03.1-02(12) and (13) N.D.C.C. respectively.

[¶5] The lower Court's findings of fact, conclusions of law, and order for treatment, which came forth at the conclusion of the treatment hearing on April 5, 2018, expressly found the Respondent to be a "mentally ill person" based upon "paranoia, manic episode, and mood disorder NOS[not otherwise specified]." [App. p. 51]

[¶6] The Court in its findings went on to write that the evidence supporting the finding that the Respondent was a "mentally ill person" under Section 25-03.1-02(12) N.D.C.C. included "displays of unstable affect of irritability and crying, and that the Respondent believed she was being monitored" at her winter resort in Arizona, poor decision-making and being in a state of denial." [Id. at 51]

[¶7] The lower court went on to find, in its analysis of the Respondent as a "person requiring treatment" as a "mentally ill person" under Section 25-03.1-02(13) N.D.C.C. "that if the Respondent was not treated there exists a substantial risk of harm to the Respondent, others, or property and a substantial likelihood of the substantial deterioration in mental health which would predictably result in dangerousness to the Respondent, others or property, based upon evidence of objective facts to establish the loss of cognitive or volitional control over the Respondent's thoughts or actions or based upon based upon acts, threats, or patterns in the Respondent's treatment history, current condition, and other relevant factors, including the effect of the Respondent's mental condition on the Respondent's ability to consent." [App. p. 52]

[¶8] The analysis relayed above is essentially the language of Section 25-03.1-02(13) N.D.C.C. as it is found on the standard form for all cases where findings of fact, conclusions of law, and treatment orders of the court are entered in mental health cases. However, the lower Court went on to make hand-written findings elaborating on the standard language of the statute by specifically mentioning that the Respondent's "ability to make decisions is impaired by the Respondent's unstable mood and thought process." [Id. at p. 52]

[¶9] Additionally, the court went on to write and to specifically find that treatment other than hospitalization would not be adequate to meet the Respondent's needs or to prevent harm or injury to the Respondent or others and that the specific risks posed if not hospitalized would be "the Respondent has refused treatment to help stabilize her mood. [A] hospital setting is necessary to contain her behaviors." [Id. at p. 52]

[¶10] The findings of fact, conclusions of law, and the order for treatment, as stated above, were supported and supplemented by the evidence as documented and admitted in evidence at the Treatment Hearing in the form of the Report and Examination and the testimony presented by the expert examiner, psychiatrist Cheryl Huber, M.D. from Sanford Health Systems, as author of the Report of Examination, dated April 4, 2018, that Dr. Huber provided for the treatment hearing. [App. pp. 47-48]

[¶11] To further explain and demonstrate for the lower court that the Respondent was a "mentally ill" person requiring involuntary court-ordered treatment, Dr. Huber set the background for the lower court at the treatment hearing by providing the following:

Q. (Mr. Koppy continuing) Now, Dr. Huber, in the report of examination, you know, paragraph [[1] basically sets forth your, you know, your evaluation and your diagnostic impressions?
A. Yes.

Q. If you could just elaborate on that.
A. When I first met [B.A.K.] when she entered the hospital, she appeared to be in a manic state, which is characterized by she was telling me she wasn't sleeping at all, but her energy level was very high. She was -- she displayed tangential thoughts, jumping from one topic to the next, to the point sometimes that I couldn't quite follow her train of thought. She displayed mood lability, where she was crying one minute and angry the next.

[Tr. p. 26, l. 7-20]

[¶12] Explaining for the court the meaning of the words "lability of mood" Dr. Huber went to say: "Q. And what does lability of mood mean? A. That means rapid fluctuations. She also had some unusual -- what I consider delusional thoughts, apparently involving being monitored by an unknown agency related to something involving Canadians. Those kinds of symptoms often do accompany manic episodes."

[Tr. p. 26, 1. 24-25; p. 27, l. 1-5]

[¶13] Due to the fact of B.A.K.'s case being one of first impression that the Respondent presented and the symptoms of mental illness being displayed by the Respondent as they were being treated by Dr. Huber and staff at Sanford Health, Dr. Huber offered a diagnosis that was nonspecific. "It would be mood disorder, NOS [Not Otherwise Specified] and psychosis, and it was to encompass this." [Tr. p. 27, 1. 8-10]

[¶14] Even though the Respondent's diagnosis in the early stages of treatment was of a non-specific nature, Dr. Huber testified at the Treatment Hearing in reply to the question "is she a danger to herself or others by any virtue of any of the categories that would be like in paragraph 3 of page 2 of the report of examination? A. The concern would be that without treatment that addresses the underlying mood disorder, her condition could continue to deteriorate and result in loss of function, or potential risk of harm to herself or to others." [Tr. p. 30, l. 12-18] [App. pp. 47-48]

[¶15] However, Dr. Huber's main concern, as it related to the main issue facing the lower court as to whether the Respondent was a mentally ill person requiring treatment, Dr. Huber went on to testify at the Section 25-03.1-19 N.D.C.C. treatment hearing, in the following manner:

> But my concern without treatment of some sort is that
> -- that her condition could get worse, particularly--I mean,
> I think inside the hospital setting it's manageable.
> My concern currently outside the hospital setting without
> treatment is that her condition and her mood will deteriorate again.

[Tr. p. 31, l. 13-18]

[¶16] Based upon the above discussion of the combination of Dr. Huber's Report of Examination, received in evidence at the Treatment Hearing, coupled with Dr. Huber's in-court testimony addressing the Respondent's condition as a mentally ill person requiring court-ordered involuntary treatment for her mental illness, the lower court's findings of fact, conclusions of law and order for treatment, were supported by clear and convincing evidence on the statutory criteria bearing on the lower court's analysis. Therefore, the Appellee urges the court on appeal to affirm the decision of the lower court.

II. The lower court correctly applied the statutory criteria that the Respondent faced a serious risk of harm due to a substantial likelihood of, as provided at Section 25-03.1-02(20)(d) N.D.C.C., substantial deterioration in mental health which would predictably result in dangerousness to the Respondent, others or property, based upon acts, threats, or patterns in the Respondent's treatment history, current condition, or other relevant factors, including the effect on the Respondent's mental condition on the Respondent's ability to consent.

[¶17] The Appellant posits in the second part of the Appellant's brief on appeal that the chronically mentally ill criteria the Appellant argues the lower court relied upon in publishing its findings, was not supported by any evidence and therefore

the lower court erred reversibly to that extent. The Appellee argues on review that absence of a treatment history or a lack of chronic mental illness on the part of the Respondent was not foremost in the lower court's mind when committing the Respondent to involuntary treatment at the treatment hearing. Rather, the lower court relied on other, statutory permissible criteria in its findings, such as the Respondent's current acute condition of mental illness and other relevant factors.

[¶18] In paragraph [¶7] of the Appellee's brief, above, the Appellee wrote that "The lower court went on to find, in its analysis of the Respondent as a "person requiring treatment" as a "mentally ill person" under Section 25-03.1-02(13) N.D.C.C. that if the Respondent was not treated there exists a substantial risk of harm to the Respondent, others, or property and a substantial likelihood of the substantial deterioration in mental health which would predictably result in dangerousness to the Respondent, others or property, based upon evidence of objective facts to establish the loss of cognitive or volitional control over the Respondent's thoughts or actions or based upon based upon acts, threats, or patterns in the Respondent's **treatment history**, current condition, and other relevant factors, including the effect of the Respondent's mental condition on the Respondent's ability to consent." [App. p. 52] [emphasis added]

[¶19] In its findings of fact, conclusions of law, and order for treatment, at the conclusion of the treatment hearing on April 5, 2018, the lower court made specific reference to the risk of harm the Respondent posed to herself in her current condition and "that treatment other than hospitalization would not be adequate to meet the Respondent's needs or to prevent harm or injury to the

Respondent or others and that the specific risks posed if not hospitalized would be "the Respondent has refused treatment to help stabilize her mood. [A] hospital setting is necessary to contain her behaviors." [App. p. 52]

[¶20] The Appellee argues that the statutory criteria found in Section 25-03.1-02(20) N.D.C.C., defining what may be a "serious risk of harm" in the eyes of the law, includes not only the Respondent's treatment history, or relative lack of a treatment history, but also, in the words of the statute: "the individual's treatment history, current condition, and other relevant factors, including the effect of the individual's mental condition on the individual's ability to consent."

Citing Section 25-03.1-02(20)(d) N.D.C.C. (2017)

[¶21] Furthermore, the "serious risk of harm" criteria found at Section 25-03.1-02(20) N.D.C.C. above, includes an extensive list of untoward outcomes such as suicide, homicide, inflicting bodily harm on others, significant property damage, substantial deterioration in physical health, injury, disease, exposure to the elements, malnutrition, and hygiene, as well as the harms brought on by treatment history, such as the condition of the Respondent in the weeks leading up to the commitment process prior to the time of the treatment hearing on April 5, 2018.

[¶22] The Appellee argues on appeal that the multitude of statutory criteria describing "serious risk of harm" laid out in Section 25-03.1-02(20), above, are neither cumulative nor mutually exclusive. Therefore, a relative lack of a demonstrable treatment history or the absence of chronic mental illness on the part of the Respondent does not deprive the lower court from using any of the many other criteria available under the statute above, as applied to the clear and convincing evidence proven at the treatment hearing by virtue of

the Dr. Huber's Report of Examination in evidence, and the doctor's testimony on behalf of the Report of Examination. App. pp. 47-48.

[¶23] The Appellee argues on appeal that the adduced documentary evidence in the form of the Report of Examination received and admitted into evidence at the Treatment Hearing on April 5, 2018, combined with the expert testimony of the expert examiner, Dr. Cheryl Huber, a psychiatrist and the Respondent's treating physician, were sufficient to serve as support for the lower court to find that, even lacking a history of chronic mental illness, there was clear and convincing evidence of the Respondent's current condition of mental illness and other relevant factors for the lower court to use as salient reasons for its decision to order involuntary treatment for the 90 day statutory period. Citing Section 25-03.1-21(1) N.D.C.C. (2017) [App. p. 53]

Conclusion

[¶24] For the reasons stated above, the Petitioner/Appellee respectfully urges the Court on appeal to affirm the District Court's Findings of Fact, Conclusions of Law, and Order for Treatment Following Treatment Hearing or Continuing Treatment Hearing, dated April 5, 2018.

Dated the 11th day of May, 2018.

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STATE OF NORTH DAKOTA)
)SS.
COUNTY OF MORTON)

Stephanie Sheets, being first duly sworn, deposes and says that she is of legal age and on the 11th day of May, 2018, she served the attached **BRIEF OF APPELLEE / RESPONDENT** upon the following by email a true and correct copy thereof to the email listed below:

Gregory Ian Runge, ND Bar #04724
Attorney at Law
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Attorney for the Petitioner / Appellant

To the best of my knowledge and belief, such email was the actual email address of the party(ies) to be so served; that the documents were emailed in accordance with the provisions of the North Dakota Rules of Civil Procedure.

Stephanie Sheets

Subscribed and sworn to before me this 11th day of May, 2018.

KARY A STOLTZ
Notary Public
State of North Dakota
My Commission Expires May 21, 2021

Notary Public